

Appl. No.: 09/540,952  
Amdt. dated February 18, 2004  
Reply to Office action of November 19, 2003

### REMARKS/ARGUMENTS

Applicants file this Preliminary Amendment along with a Request for Continued Examination (RCE). By this amendment, Applicants amend claims 1, 2, 9, 11, 14, 15, 22, 24, 27 and 28. Specifically, Applicants amend independent claims 1, 14, and 27 to specify that latency of a particular object code instruction is measured. Corresponding amendments are made to various of the dependent claims to maintain consistent language throughout the claims. These amendments are made to further distinguish over Levine which does not disclose measuring latency of an instruction. Levine, instead, discloses simply determining whether latency of an instruction is greater than a threshold. See e.g., col. 10, lines 32-38. Levine does not teach actually measuring the latency. Levine teaches starting a decrementing counter to begin counting from a threshold value towards 0. This counter either reaches 0 or is stopped before reaching 0 by a "selected event" (i.e., resolution of a cache miss). Col. 8, lines 36-44. The Examiner also cited Krishnaswamy (U.S. Pat. No. 6,308,318) in an obviousness rejection of some of the dependent claims. Krishnaswamy does not satisfy the deficiency of Levin. For at least this reason, all pending claims are allowable over the art of record.

Applicants respectfully request that a timely Notice of Allowance be issued in this case. If any fees or time extensions are inadvertently omitted or if any fees have been overpaid, please appropriately charge or credit those fees to Hewlett-Packard Company Deposit Account Number 08-2025 and enter any time extension(s) necessary to prevent this case from being abandoned.

Respectfully submitted,



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